

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KHEPER GAMES, INC., a Washington corporation,

Plaintiff,

PACKED PARTY, INC., a Delaware corporation,
Defendant.

Case No.

COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Kheper Games Inc. (“Kheper Games”) alleges as follows by way of complaint against Defendant Packed Party Inc. (“Packed Party” or “Defendant”):

PARTIES

1.1 Plaintiff Kheper Games is a Washington corporation whose principal place of business is in Seattle, Washington.

1.2 Defendant Packed Party, Inc. is a corporation organized under the laws of Delaware with its principal place of business located, upon information and belief, at 17950 Preston Road, Suite 980, Dallas, Texas. Upon information and belief, Packed Party is a wholesaler and online retailer with an interactive website selling party and event products, including a product it calls “Disco Drink,” to retailers and consumers throughout the United States including within this District.

NATURE OF THE ACTION

2.1 This is an action for patent infringement, violations of the Lanham Act, unfair competition, and defamation.

2.2 Packed Party, Inc. has infringed and continues to infringe, contributes to the infringement of, and/or actively induces others to infringe Kheper Games's U.S. Patent No. US D768,031 S (the '031 patent).

JURISDICTION AND VENUE

3.1 Kheper Games realleges and incorporates by reference the allegations of paragraphs 1.1-1.3 of this Complaint as though fully set forth herein.

3.2 This Court has jurisdiction over the action pursuant to 15 U.S.C. § 1121 (Lanham Act), and 28 U.S.C. §§ 1331 and 1338 because it involves questions of federal patent and unfair competition laws.

3.3 This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are each incorporated and have principal places of business in different states and the amount in controversy exceeds \$75,000.00.

3.4 This Court also has supplemental jurisdiction over the action pursuant to 28 U.S.C. § 1337 because all of the claims stated herein are related.

3.5 This Court has personal jurisdiction over Defendant for at least the following reasons:

(i) Defendant has committed acts of patent infringement and/or contributed to or induced acts of patent infringement by others in this District and elsewhere in Washington and the United States; and/or,

(ii) Defendant regularly does business or solicits business, engages in persistent courses of conduct, and/or derives substantial revenue from products and/or services provided to individuals and retailers in this District and in this State.

3.6 Upon information and belief, and according to statements by Defendant,

Defendant has or has had the Disco Drink product in at least three national chains.

3.7 According to statements by Defendant, Paper Source and Francesca's Collections, Inc. are or were customers of Defendant and have purchased the Disco Drink product. It is common knowledge that both Paper Source and Francesca's Collections have retail stores located in Seattle and Washington State.

3.8 At least one individual has purchased the Disco Drink online and had the infringing item shipped to their residence located in this District.

3.9 Defendant's Disco Drink is also sold online via their own interactive consumer product websites; via Swoozies.com, an interactive consumer product website; and via Ban.do at bando.com, an interactive consumer product website with retailers in this District.

3.10 Upon information and belief, Defendant sold the Disco Drink to either twelveNYC or directly to Macy's, a national retailer, and it was sold in Macy's stores nationwide during the 2016 holiday season.

3.11 Defendant has also engaged in national marketing and press via outlets that are aimed at and reach consumers and retailers in this District such as InStyle, Today (the morning news show), Glamour, Teen Vogue, HuffPost Style, Martha Stewart Weddings, and more.

3.12 Packed Party is familiar with Kheper Games and is aware that Kheper Games is based in this District

STATEMENT OF FACTS

4.1 Kheper Games has been part of the Party and Event Supply Trade industry since 1995.

4.2 In or about 2015, Packed Party entered the market.

4.3 Packed Party's "Disco Drink" is its featured product. It features on its website landing page, and is highlighted in all photos in the Defendant's 2017 Wholesale Catalog. The

1 catalog lists the “Disco Drink” as the first item, on its own page, and highlights that it is
2 Defendant’s “BEST SELLER!”

3 4.4 Kheper Games is the owner of all rights, title, and interest in the ‘031 patent, a
4 design patent for “an ornamental design for a faceted sphere,” which was duly and properly
5 issued by the United States Patent and Trademark Office (USPTO) on October 4, 2016. A copy
6 of the ‘031 patent is attached as Exhibit A.

7 4.5 The primary feature of Packed Party's "Disco Drink" is its ornamental design of a
8 faceted sphere.

CLAIMS

PATENT INFRINGEMENT

11 5.1 Kheper Games realleges and incorporates by reference the allegations of
12 paragraphs 1.1-4.5 of this Complaint as though fully set forth herein.

13 5.2 Upon information and belief, in violation of 35 U.S.C. § 271, Defendant is and
14 has been directly infringing, contributing to the infringement of, and/or inducing others to
15 infringe the ‘031 patent by making, using, selling, and/or offering to sell in the United States, or
16 importing into the United States, products or processes that practice the inventions claimed by
17 the ‘031 patent, including without limitation the “Disco Drink,” “Original Packed Party Disco
18 Drink Tumbler,” and the “Original Packed Party Disco Drink.”

19 5.3 Kheper Games has been and will continue to be irreparably harmed and damaged
20 by Defendant's conduct, and Kheper Games lacks an adequate remedy at law to compensate for
21 this harm and damage.

22 5.4 Upon information and belief, Defendant has gained profit by virtue of their
23 infringement of the '031 patent.

24 5.5 Kheper Games has sustained damages as a direct and proximate result of
25 Defendant's infringement of the '031 patent in an amount to be proven at trial.

UNFAIR COMPETITION

5.6 Kheper Games realleges and incorporates by reference the allegations of paragraphs 1.1-5.5 of this Complaint as though fully set forth herein.

5.7 Upon information and belief, in violation of 15 U.S.C. § 1125(a), Packed Party is and has been offering for sale and selling the “Disco Drink” under the false or misleading description of fact or false or misleading representation of fact as “Original Packed Party Disco Drink Tumbler,” and the “Original Packed Party Disco Drink,” and this falsity is likely to cause confusion or mistake, or to deceive.

5.8 Upon information and belief, in violation of 15 U.S.C. § 1125(a), Packed Party is and has been offering for sale and selling the “Disco Drink” under the false or misleading description of fact or false or misleading representation of fact as “Original Packed Party Disco Drink Tumbler,” and the “Original Packed Party Disco Drink,” in commercial advertising or promotion misrepresented the nature, characteristics, or qualities of the “Disco Drink” as “original.”

5.9 As a result of these actions, Kheper Games has been injured and Packed Party has violated Chapter 19.86 of the Revised Code of Washington, in particular RCW 19.86.020.

5.10 Kheper Games has been and will continue to be irreparably harmed and damaged by Defendant's conduct, and Kheper Games lacks an adequate remedy at law to compensate for this harm and damage.

5.11 Upon information and belief, Defendant has gained profit by virtue of their actions in violation of federal and state unfair competition laws.

5.12 Kheper Games has sustained damages as a direct and proximate result of Defendant's violation of federal and state unfair competition laws in an amount to be proven at trial.

INTERFERENCE WITH BUSINESS RELATIONSHIPS

5.13 Kheper Games realleges and incorporates by reference the allegations of

1 paragraphs 1.1-4.5 of this Complaint as though fully set forth herein.

2 5.14 For more than three years Kheper Games had an on-going contractual business
3 relationship with Francesca's Collections, Inc. In violation of Washington law, Defendant
4 intentionally interfered with and caused harm to and, potentially, the loss of this business
5 relationship.

6 5.15 Defendant was aware of and had knowledge of this business relationship.

7 5.16 Defendant intentionally communicated with and took actions that induced or
8 caused harm to and the loss of this business relationship between Kheper Games and Francesca's
9 in order to cause Kheper Games economic and reputational injury.

10 5.17 As a proximate cause of Defendant's intentional interference, Kheper Games has
11 been damaged in an amount to be proven at trial.

12 ***DEFAMATION***

13 5.18 Kheper Games realleges and incorporates by reference the allegations of
14 paragraphs 1.1-4.5 of this Complaint as though fully set forth herein.

15 5.19 Defendant and/or an authorized agent of Defendant made a false statement that is
16 not protected by privilege causing Kheper Games damages.

17 5.20 On or about February 7, 2017, an authorized agent of Packed Party, told the
18 Family and Youth Product Editor for the New York Amsterdam News who supervises and writes
19 the gift guides and product guides for the paper, that Kheper Games's Disco Cup was
20 "substandard" and "cheap." Packed Party's agent was speaking freely in a crowded trade hall,
21 and upon information and belief repeated these or similar statements to other attendees of the
22 trade show which typically includes buyers, other sellers, and industry media.

23 5.21 As a result of these false statements, Kheper Games has been damaged in an
24 amount to be proven at trial.

25 ***REQUEST FOR RELIEF***

26 Wherefore, Plaintiff requests that the Court provide the following relief:

1. A judgment that Defendant has intentionally infringed the '031 patent;
2. An order and judgment preliminarily and permanently enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of Kheper Games's asserted patents;
3. A judgment awarding Kheper Games all damages including the amount of Defendant's total profits pursuant to 35 U.S.C. § 289 and 15 U.S.C. § 1117;
4. Treble damages pursuant to 35 U.S.C. § 284;
5. Reasonable funds for future corrective advertising;
6. An accounting of Defendant's profits;
7. A judgment awarding Kheper Games all damages sustained in an amount to be proven at trial;
8. A judgment awarding Kheper Games all actual damages sustained, together with the costs of this suit, including reasonable attorney fees pursuant to RCW 19.86.090;
9. A judgment awarding Kheper Games treble damages pursuant to RCW 19.86.090;
10. Pre-judgment and post-judgment interest;
11. Costs of suit and attorney fees pursuant to 35 U.S.C. § 285 and any other applicable law; and

Such other relief to which Kheper Games is entitled or as this Court deems just and equitable.

DATED this 14th day of July, 2017.

s/Mona McPhee
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Attorneys for Plaintiff Kheper Games, Inc.